## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION

| JOHN DOE, et al.,                      | )                          |
|--|----------------------------|
| Plaintiff,                             | )<br>)                     |
| v.                                     | ) No. 1:12-cv-0062 TWP-MJD |
| CITY OF INDIANAPOLIS, INDIANA, et al., | )<br>)<br>)                |
| Defendants.                            | )<br>)                     |

## Plaintiff's Motion to Certify Case as Class Action

Plaintiff, by his counsel, moves that this Court certify this case as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. In support of this motion he says that:

- 1. This action is brought by plaintiff on his own behalf and on behalf of a class of those similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.
- 2. The class is defined as:
  - all Marion County residents required to register as sex or violent offenders pursuant to Indiana law who are not subject to any form of supervised release and who have been found to be a sexually violent predator under Indiana law or who have been convicted of one or more of the offenses noted in Indiana Code § 35-42-4-12(b)(2) and who are not within the statutory exceptions noted in Indiana Code § 35-42-4-12(a).
- 3. As defined, the class meets all the requirements of Rule 23(a) of the Federal Rules of Civil Procedure. Specifically:
  - a. The class is so numerous that joinder of all members is impracticable. The exact size of the class must be ascertained through discovery. However, it is believed to be more than 100.
  - b. There are questions of law or fact common to the class whether Indiana Code § 35-42-4-12 is unconstitutional to the extent that it prohibits plaintiff and the class,

under penalty of criminal prosecution, from using a social networking site or an instant messaging or chat room program if the site or program can be accessed or used by persons under the age of 18.

- c. The claims of the plaintiff are typical of those of the class.
- d. The plaintiff will fairly and adequately protect the interest of the class. Undersigned counsel is an appropriate person to be appointed class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.
- 4. The further requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure are met here in that the parties opposing the class have at all times acted or refused to act on grounds that apply generally to the class, so that final injunctive relief and/or corresponding declaratory relief is appropriate respecting the class as a whole.
- 5. In further support of this motion the plaintiff separately submits his memorandum of law.

WHEREFORE, plaintiff requests that this case be certified as a class action, with the class as defined above, and that Kenneth J. Falk be appointed counsel for the class, and for all other proper relief.

/s/ Kenneth J. Falk Kenneth J. Falk No. 6777-49 ACLU of Indiana 1031 E. Washington St. Indianapolis, IN 46202 317/635-4059 ext. 104 fax: 317/635-4105 e-mail:kfalk@aclu-in.org

Attorney for Plaintiff

## Certificate of Service

I hereby certify that on this  $18^{th}$  day of January, 2012, a copy of the foregoing was filed electronically with the Clerk of this Court. I was also mailed on this date to the following parties by first class U.S. postage, pre-paid.

City of Indianapolis, Indiana

c/o Mayor, City of Indianapolis Room 2501 City County Building 200 E. Washington St. Indianapolis, IN 46204

Marion County Prosecutor 251 E. Ohio Street Suite 160 Indianapolis, IN 46204

> /s/ Kenneth J. Falk Kenneth J. Falk Attorney at Law